

## HOUSE BILL NO. 421

INTRODUCED BY S. MENDENHALL

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA CLEAN GOVERNMENT ACT; LIMITING UNDUE INFLUENCE OF POLITICS IN GOVERNMENT CONTRACT PROCUREMENT PRACTICES BY PLACING TRANSPARENCY REQUIREMENTS ON GOVERNMENT CONTRACTORS; IMPOSING CONTRACTUAL DETERRENTS TO ELECTION ACTIVITY INVOLVING NO-BID CONTRACTS; PROVIDING THAT PERSONS MAKING EXPENDITURES OR CONTRIBUTIONS TO INFLUENCE A BALLOT ISSUE ARE DISQUALIFIED FROM NO-BID CONTRACTS RELATING TO THAT PARTICULAR BALLOT ISSUE; REQUIRING GOVERNMENT CONTRACTORS TO FILE A SUMMARY OF GOVERNMENT CONTRACTS FOR INTERNET PUBLICATION; ESTABLISHING THAT IT IS CONSIDERED OFFICIAL MISCONDUCT FOR AN ELECTED OFFICIAL, PUBLIC OFFICER, OR PUBLIC EMPLOYEE TO INDUCE OR CONCEAL A VIOLATION; PROVIDING FOR RULEMAKING AUTHORITY; AND PROVIDING CIVIL REMEDIES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION.** **Section 1. Short title.** [Sections 1 through 8] may be cited as the "Montana Clean Government Act".

**NEW SECTION.** **Section 2. Purpose.** The purpose of [sections 1 through 8] is to avoid corruption or the appearance of corruption, to increase economy in government contracting and procurement activities, to maximize to the fullest extent possible the purchasing power of public funds, and to increase public confidence in those activities by:

(1) requiring contractors to abide by open transparency and reporting requirements, including providing information sufficient for summaries of all no-bid government contracts to be maintained by the commissioner and published on the internet; and

(2) specifically requiring no-bid government contractors and political action committees or holders of separately segregated funds created or controlled by no-bid government contractors to contractually agree to refrain from making contributions or expenditures to fund state and local political parties and candidates and, if a contractor contributes or makes an expenditure to influence a ballot issue, requiring that the contractor be

1 disqualified from consideration for any no-bid contract that relates to the ballot issue.

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3 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 8], the following definitions  
4 apply:

5 (1) "Commissioner" means the commissioner of political practices as provided for in 2-15-411.

6 (2) "Contractor" means a nongovernmental entity that is a party to a no-bid contract or a person in control  
7 of or a party to a no-bid government contract for goods and services exceeding \$25,000 and building contracts  
8 exceeding \$75,000. The threshold amounts are cumulative and include all no-bid government contracts with any  
9 government entity of the state involving the contractor or person in control of contracts during a calendar year.

10 (3) "Contribution" has the meaning provided in 13-1-101.

11 (4) "Expenditure" has the meaning provided in 13-1-101.

12 (5) "Government entity" means state government and all departments of the state and political  
13 subdivisions, including local governments with general powers and specifically including local governments with  
14 self-governing powers. The term includes all departments, commissions, councils, boards, bureaus, committees,  
15 institutions, agencies, government corporations, other entities, instrumentalities, and public officials of the  
16 legislative, executive, or judicial branch of this state and its political subdivisions, including the board of regents  
17 and the Montana university system, school districts, or special districts.

18 (6) "Immediate family member" means any person related or connected by consanguinity within the  
19 fourth degree or by affinity within the second degree.

20 (7) (a) "No-bid contract" means any contract with a governmental entity that is a sole-source government  
21 contract or a contract that was not awarded after a public and open competitive bidding process for which at least  
22 three bids were received prior to awarding the contract. The term includes collective bargaining agreements with  
23 a labor organization or entity representing employees, if the contract or agreement confers an exclusive  
24 representative status to bind all employees to accept the terms and conditions of the contract.

25 (b) The term does not include employment contracts with individual employees.

26 (8) "Person in control" means a person who controls 10% or more of the shares or interest in the entity  
27 holding a government contract and includes that entity's officers, directors, trustees, partners, political action  
28 committees, or separate segregated funds created or controlled by that entity or, in the case of collective  
29 bargaining agreements, the labor organization and any funds created or controlled by the labor organization.

**NEW SECTION. Section 4. Transparency in government contracting -- rulemaking.** (1) Each

contractor subject to the provisions of [sections 1 through 8] shall promptly submit to the commissioner a summary of government contract. Submission may be by e-mail, facsimile, or other electronic transmission, must accurately contain the required information, and must be in a form substantially as follows:

**SUMMARY OF GOVERNMENT CONTRACT**

**1. PURPOSE OF CONTRACT**

Brief description of contract and goods provided or services performed:

\_\_\_\_\_

**2. NAME AND ADDRESS OF GOVERNMENT PARTY TO CONTRACT**

\_\_\_\_\_

(Name, Address, City, State, Zip Code)

**3. NAME AND ADDRESS OF CONTRACTOR**

\_\_\_\_\_

(Name, Address, City, State, Zip Code)

**4. NAME AND ADDRESS OF EACH PERSON IN CONTROL OF CONTRACT**

\_\_\_\_\_

(Name, Address, City, State, Zip Code)

**5. TERM/ESTIMATED DURATION OF CONTRACT**

When did the contract start and when will it end?

Start: \_\_\_\_\_ End: \_\_\_\_\_

**6. TOTAL EXPECTED AMOUNT OF CONTRACT PAYMENTS: \$\_\_\_\_\_**

If multiyear contract, prorate expected amount accrued for each year: 20\_\_ \$\_\_\_\_\_, 20\_\_ \$\_\_\_\_\_, 20\_\_

\$\_\_\_\_\_, 20\_\_ \$\_\_\_\_\_.

**7. THE CONTRACT IS:**

( ) a no-bid contract; or

( ) a contract awarded after bidding.

(2) As an aid to enforcement of [sections 1 through 8], the commissioner shall promptly publish and maintain summaries of government contracts subject to [sections 1 through 8] on the commissioner's official internet website and at the commissioner's office. Contractors shall update the summary annually if necessary to accurately maintain the information. The commissioner may promulgate rules to implement this section and

1 that may disseminate any information not in violation of federal law, trade secrets, or intellectual property rights.

2  
3 **NEW SECTION. Section 5. Election activities by contractors -- rulemaking.** (1) (a) To reduce  
4 corruption or the presumption of improprieties between government contractors and government entities, no-bid  
5 government contractors, within the terms of each contract, shall agree for the term of the contract and 2 years  
6 after the termination date or last contract payment, whichever is later, to cease making, causing to be made, or  
7 inducing by any means any contribution or expenditure designed to influence the election or defeat of ballot  
8 measures or candidates for state or local office. The contractor or person in control shall agree not to use an  
9 immediate family member, political committee, or any other proxy to make a contribution or expenditure or  
10 earmark a contribution or expenditure.

11 (b) Any person who makes or causes to be made a contribution or expenditure intended to influence the  
12 results of an election on a ballot issue may not enter into a no-bid government contract relating to that particular  
13 issue.

14 (2) The commissioner may promulgate rules to implement this section.

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16 **NEW SECTION. Section 6. Citizen complaints -- costs and attorney fees reimbursement.** (1) If for  
17 any reason a person suspects collusion or anticompetitive practices by a government entity among any  
18 contractors making a contribution or expenditure in violation of [sections 1 through 8] to a candidate's political  
19 campaign, an independent political committee or other political committee, or a ballot issue campaign, the citizen  
20 may file a complaint with the commissioner pursuant to 13-37-111 or rules adopted by the commissioner. The  
21 person filing the complaint has a private right of action if the commissioner fails to act on the complaint by issuing  
22 statements of fact and an order within 60 days of filing of the complaint.

23 (2) If a person who brings a citizen complaint prevails, that person is entitled to be reimbursed by the  
24 state for costs and attorney fees incurred.

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26 **NEW SECTION. Section 7. Penalties.** (1) A person who violates any provision or agreement under  
27 [sections 1 through 8] is liable in a civil action brought by the commissioner or county attorney or by a private  
28 citizen if the commissioner or county attorney fails to act on a complaint within 60 days of filing the complaint. The  
29 liability is the greater of \$500 or three times the amount of the unlawful contributions. All money collected under  
30 this section must be deposited in the state general fund. If a person responsible for the bookkeeping of a no-bid

1 contractor, a person in control of a contract, or a person acting on behalf of a government obtains knowledge of  
2 a contribution or expenditure made or accepted in violation of [sections 1 through 8] and that person fails to notify  
3 the commissioner within 10 days of learning of the contribution or expenditure, then that person is jointly and  
4 severally liable for any costs, penalties, fees, expenses, or losses.

5 (2) In addition to the penalties provided in subsection (1), a person found to be in violation of [sections  
6 1 through 8] is disqualified to enter into a no-bid government contract for a period of 3 years. This period of  
7 disqualification may be suspended by the governor, but only during periods of a declared emergency.

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9 **NEW SECTION. Section 8. Applicability to elected officials and public officials and government**  
10 **employees in control of contracts.** It is considered official misconduct, as provided in 45-7-401, for an elected  
11 official, public officer, or public employee to violate [sections 1 through 8] or to actively engage in inducing or  
12 concealing a violation of [sections 1 through 8].

13  
14 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 8] are intended to be codified  
15 as an integral part of Title 13, and the provisions of Title 13 apply to [sections 1 through 8].

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17 **NEW SECTION. Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are  
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
19 the part remains in effect in all valid applications that are severable from the invalid applications.

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